

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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LUIS ZAMUDIO,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
JOSEPH J. PERRY of the NEW
YORK CITY POLICE DEPARTMENT,
Defendant(s),

Plaintiff
DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

CV 12 3859

COMPLAINT AND
JURY DEMAND

VITALIANO, J.

J. ORENSTEIN, M.J.

PRELIMINARY STATEMENT

1. This is an action for monetary damages (compensatory and punitive) against THE CITY OF NEW YORK, and POLICE OFFICER JOSEPH J. PERRY of the NEW YORK CITY POLICE DEPARTMENT, arising out of the false arrest and false imprisonment of LUIS ZAMUDIO.

2. On August 7, 2009, POLICE OFFICER JOSEPH J. PERRY of the NEW YORK CITY POLICE DEPARTMENT and other members of the NEW YORK CITY POLICE DEPARTMENT, acting under the color of state law, intentionally and willfully subjected plaintiff to, inter alia, false arrest, false imprisonment and detention for acts of which plaintiff was innocent. This unconstitutional and unreasonable seizure of the plaintiff and his property was in violation of plaintiff's rights under the Fourth and Fourteenth Amendments of the United States Constitution.

3. The Plaintiff, LUIS ZAMUDIO, through his attorney, JONATHAN A. FINK, complaining of the defendants, respectfully alleges:

JURISDICTION

4. This action is brought under 28 USC §§ 1331 and 1343, 42 §§ 1983, 1985 and 1988 and the Fourth, Fifth and Fifteenth Amendments to the Constitution of the United States. Pendant Jurisdiction, pendant party jurisdiction, and supplementary jurisdiction over plaintiff's state law claims is asserted.

5. The amount in controversy exceeds \$75,000.00 excluding interest and costs.

6. Venue is laid within the United States District Court for the Eastern District of New York in that the claims alleged in the complaint occurred within the boundaries of the Eastern District of New York, particularly Kings County.

PARTIES

7. Plaintiff at all times relevant hereto resided in the City and State of New York County of Kings.

8. That at all times hereinafter mentioned, and upon information and belief, the defendant, THE CITY OF NEW YORK, was at all times relevant hereto, a municipal corporation duly organized and existing under the laws, statutes and charters of the State of New York.

9. THE NEW YORK CITY POLICE DEPARTMENT was at all times relevant hereto, an agency of the defendant THE CITY OF NEW YORK.

10. That at all times hereinafter mentioned, and on information and belief, the defendant POLICE OFFICER JOSEPH J. PERRY, was at all times relevant hereto, an employee of the defendant CITY OF NEW YORK, as a police officer employed by the defendant, THE NEW YORK CITY POLICE DEPARTMENT.

11. At all times mentioned herein, defendants were acting under color of state and local law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the City of New York and the State of New York.

12. That at all times hereinafter mentioned, and upon information and belief, the individual defendants are named herein both personally and in their official representative capacities as police officers employed by the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT. And that each and all of the acts of the individual defendants alleged herein were done by the individual defendants and each of them under cover and pretense of the statutes and laws of the State of New York, and under and by virtue of their authority as police officers and employees of defendant, THE CITY OF NEW YORK.

13. That as a result of the foregoing, the defendant, THE CITY OF NEW YORK, is liable for the individual defendant's acts under to the doctrine of "respondeat superior."

NOTICE OF CLAIM

14. Within 90 days of the occurrence of the incident, plaintiffs filed written Notice of Claim with the City of New York. This matter has not been settled or otherwise disposed of.

FACTUAL ALLEGATIONS

15. Sometime in the early morning of August 7, 2009, members of the New York City Police Department, entered the plaintiff's home at 91 East 18th Street, Apt. 4C, Brooklyn, NY, and forcefully took plaintiff to the 70th Precinct where he was placed under arrest by defendant POLICE OFFICER JOSEPH J. PERRY. Plaintiff was then taken to Kings County Criminal Court at 120 Schermerhorn Street, Brooklyn, New York where he was arraigned on August 9, 2009 before Judge McGuire on Docket No. 2009KN062954. The Court ordered bail set in the amount of \$40,000.00 and adjourned the case to Part AP1F on August 12, 2009. On August 12, 2009, in Part AP1F, following the People's motion, the case was dismissed and sealed and the plaintiff who had been incarcerated since August 7, 2009 was released from jail. While on Rikers Island plaintiff was forced to give blood against his will.

16. As a result, defendants imprisoned and detained plaintiff, restrained him, and deprived him of his liberty and property without any right to do so, and against the will of the plaintiff.

17. The arrest of the plaintiff was committed by the defendants without legal process and without probable cause.

18. The plaintiff remained in custody for approximately six days.

19. Defendants acted maliciously and intentionally.

20. As a direct and proximate result of the acts of defendants, plaintiff suffered injuries including but not limited to, embarrassment, humiliation and loss of liberty.

FIRST CLAIM FOR RELIEF
(FALSE ARREST AND ILLEGAL IMPRISONMENT)

21. Paragraphs 1 through 20 are herein incorporated by reference.
22. Defendants subjected plaintiff to false arrest, imprisonment, and deprivation of liberty without probable cause.
23. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under 42 U.S.C. §§ 1983 and 1985 and the New York State Constitution.
24. As a result of the false arrest, imprisonment, and deprivation of liberty, plaintiff was damaged in the sum of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of One Million (\$5,000,000.00) Dollars;
- B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF
(MUNICIPAL LIABILITY)

25. Paragraphs 1 through 24 are incorporated herein by reference.
26. Defendant CITY OF NEW YORK is liable for the damages suffered by the plaintiff as a result of the conduct of its employees, agents, and servants.
27. Defendant CITY OF NEW YORK knew or should have known of their employees', agents', or servants' propensity to engage in the illegal and wrongful acts detailed above.
28. Upon information and belief, defendants and their supervisors have in the past falsely arrested individuals without probable cause, and made, and allowed other

fellow police officers to make false entries in official police department records to cover up and hide their wrongful conduct.

29. Defendant CITY OF NEW YORK has failed to take steps necessary to discipline, train, supervise or otherwise correct the improper, illegal conduct of the individual defendants in this and in similar cases involving misconduct.

30. Defendant CITY OF NEW YORK has damaged the plaintiff by its failure to properly supervise, train, discipline, review, remove, or correct the illegal and improper acts of its employees, agents or servants in this and in similar cases involving police misconduct.

31. Defendants subjected plaintiff to false arrest and false imprisonment.

32. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF
(FOURTH AMENDMENT)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. Defendants POLICE OFFICER JOSEPH J. PERRY arrested plaintiff subjecting him to false arrest, imprisonment and deprivation of liberty without probable cause.

35. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured him by the constitution and the laws of the United States: the right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

36. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;
- B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(FOURTEENTH AMENDMENT)

37. Paragraphs 1 through 36 are incorporated herein by reference.

38. Defendants POLICE JOSEPH J. PERRY illegally arrested plaintiff subjecting him to false arrest, imprisonment and deprivation of liberty without probable cause.

39. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured him by the constitution and the laws of the United States: the right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under

the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

40. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;
- B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

FIFTH CAUSE OF ACTION
(MALICIOUS PROSECUTION)

- 41. Paragraphs 1 through 40 are incorporated herein by reference.
- 42. Defendants caused a false accusatory instrument to be filed against plaintiff.
- 43. The criminal instrument was dismissed and the criminal proceedings favorably terminated.
- 44. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under 42 U.S.C. §§ 1983 and 1985 and the New York State Constitution.
- 45. Plaintiff was damaged in the sum of Five Million (\$5,000,000.00) Dollars as a result of the malicious prosecution implemented by the defendants.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of One Million (\$5,000,000.00) Dollars on each of the plaintiff's Causes of Action;
- B. Awarding plaintiff punitive damages in the amount of One Million (\$5,000,000.00) Dollars on each of the plaintiff's Causes of Action;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action;

JURY DEMAND

Plaintiff demands a jury trial.

Dated: New York, New York
August 3, 2012

FINK & KATZ, PLLC

By: 
Jonathan A. Fink
One of Plaintiff's Attorneys

Attorneys for Plaintiffs

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